

§ 159B-9. Creation of a joint agency; board of commissioners.

(a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

- (1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;
- (2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;
- (3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and
- (4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each governing board shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. The governing board of the municipality shall thereupon by ordinance or resolution appoint one commissioner of the joint agency who may, at the discretion of the governing board, be an officer or employee of the municipality.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing

the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(b) After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159B-9, and authorizing said municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

(c) The powers of a joint agency shall be exercised by or under the authority of, and the business and affairs of a joint agency shall be managed under the direction of, its board of commissioners. However, all or a portion of those powers and the management of all or any part of the business and affairs of a joint agency may be exercised by an executive committee created pursuant to G.S. 159B-10. The board of commissioners shall consist of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which the commissioner was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing body by which that commissioner was appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed

commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. The offices of commissioner, alternate commissioner, or officer of a joint agency are hereby declared to be offices which may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute.

(d) The board of commissioners of the joint agency shall annually elect one of the commissioners as chairman, another as vice-chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or any assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(e) A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

(f) No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties. (1975, c. 186, s. 1; 1977, c. 385, ss. 3, 4; 1979, c. 102; 1983, c. 574, s. 3; 1985, c. 243, s. 1; 1995, c. 412, s. 5.)